

August 28, 2020

Mr. Eric J. Chodnicki  
Daft, McCune & Walker, Inc.  
501 Fairmount Avenue  
Suite 300  
Towson, Maryland 21286

Re: Foxhall Solar at Dykes Property  
Forest Buffer Variance  
Tracking # 03-20-3294

Dear Mr. Chodnicki:

A request for a variance from Article 33, Title 3, Protection of Water Quality, Streams, Wetlands and Floodplains (i.e. Forest Buffer Law) was received by Environmental Impact Review (EIR) staff of the Department of Environmental Protection and Sustainability (EPS) on August 13, 2020. This variance seeks to allow the continued existing use of approximately 1.18 acres (51,475 square feet (sf)) of Forest Buffer Easement (FBE) for long-standing residential and farm uses including the existing farmhouse, springhouse, several accessory buildings, man-made pond and yard area on the 71-acre property. The FBE is being required as a result of the proposed installation of an approximately 13-acre, 2 megawatt or less solar array facility within an area of meadow and row-crop farm field on the far northern end of the split-zoned RC-2, RC-4, RC-5 & RC-8 property. The remaining 1.42 acres of the proposed open meadow FBE is being offered, in part, at 1:1 mitigation for the continued-use impact and will be reforested and placed in a perpetual easement of non-disturbance.

The FBE is being established from a first order tributary of Dykes Run, a Use III-P stream (trout & potable water supply) and its adjacent wetlands that bisect the property and are tributary to the Gunpowder River. The approximately 2.6-acre (113,450 sf) FBE was designed and expanded in accordance with Section 33-3-111 of the Forest Buffer Law. A combination preliminary Forest Buffer Protection and Forest Conservation Plan (FBP/FCP) was included with the variance request and the submission illustrates 1.18 acres of tree planting as mitigation for the impacts, a 1:1 ratio, that will fill in a 1.4-acre meadow portion of the FBE and that will form a buffer strip between the solar array and the receiving pond and waterway within the FBE. The remaining approximately 0.2-acre portion of the FBE is also proposed to be planted to satisfy a portion of the project's Forest Conservation Law requirements. The property owner will record the full extent of the Forest Buffer Easement and any Forest Buffer & Forest Conservation Easement along

with the associated Declarations of Protective Covenants, Conditions and Restrictions. It should be noted that an additional 35.9 acres of the property have previously been placed in a Forest Buffer and Forest Conservation Easement (and Baltimore County Access Easement) and sold as part of a retention bank agreement in the late 1990s.

This Department has reviewed your request and has determined that a practical difficulty in fully meeting the Forest Buffer Law exists, in that both the structures and residential practices within the required Forest Buffer area predate this Law. Furthermore, we find that the potential for impacts to water quality as a result of this proposal can be adequately minimized by performing mitigative measures including, but not limited to, those proposed in the variance application. Therefore, we will grant this request in accordance with Section 33-3-106(a)(1) of the Baltimore County Code with the following conditions:

1. As proposed, impacts to the Forest Buffer Easement shall be mitigated at a 1:1 ratio by planting 1.18 acres of the remaining 1.4-acre FBE. Trees shall be native deciduous species at a minimum 1-inch caliper and planted at a density of 200 stems per acre.
2. Surveyed limits of the non-disturbance portion of the Forest Buffer Easement shall be clearly marked onsite at 100-foot intervals and significant turning points with permanent "Forest Buffer-Do Not Disturb" signs to facilitate identification of buffer limits by all involved parties. These signs, which are available from private sign contractors (Enclosures 1 & 2), shall be installed prior to building permit approvals or March 1, 2021, whichever comes first.
3. A combination final FBP/FCP detailing the proposed planting and addressing the subsequent review comments from EPS staff and reflecting the conditions of this variance shall be submitted along with an itemized cost estimate for its implementation. The FBP/FCP Mylar and its cost estimate shall be approved by EIR prior to building permit or Environmental Agreement approval, whichever comes first, for this project.
4. A FBP security based on 110% of the EIR-approved cost estimate shall be posted via an Environmental Agreement (EA) prior to signature of the subdivision Mylar. Release of the FBP security shall be in accordance with the enclosed EA policy (Enclosure 3).
5. The full extent of the Forest Buffer Easement and Forest Buffer & Forest Conservation Easement as designed in accordance with Section 33-3-111 of the Forest Buffer Law and their associated Declarations of Protective Covenants, Conditions and Restrictions shall be recorded in the Land Records of Baltimore County via the right-of-way plat or record plat process prior to approval of the

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building permit for the solar array. However, the limit of non-disturbance Forest Buffer may be reduced by 1.18 acres in accordance with the variance.

6. Illustrate the existing private sewage disposal system and the 10,000 square foot septic reserve area associated w/ the farmhouse to remain.
7. Any future repair, removal, reconfiguration and/or reconstruction of the existing farmhouse dwelling, outbuildings, pond, springhouse and combined storm drain/piped stream conduit that were the subject of this variance shall be reviewed and approved through review and approval of grading and/or building permit by EIR staff.
8. The following note must appear on all subsequent plans submitted for this project:
  - “A variance was granted on August 28, 2020, by the Baltimore County Department of Environmental Protection and Sustainability from the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains. The area of continued use within the Forest Buffer Easement shown hereon is reflective of the fact that this variance was granted. Conditions were placed on this variance to reduce water quality impacts including planting 1.4 acres of this buffer, and posting protective signs along the boundary of the functioning Forest Buffer Easement.”

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the property owners sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael S. Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Director

DVL/msk  
Enclosures (3)

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I/we agree to the above conditions to bring my/our property into compliance with Law  
for the Protection of Water Quality, Streams, Wetlands and Floodplains.

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Solar Co.'s Rep.'s Signature      Date

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Solar Co.'s Rep., 's Signature      Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

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Property Owner's Signature      Date

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Property Owner's Signature      Date

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